IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2486 OF 2005

IN

NOTICE OF MOTION NO. 2260 OF 2005

IN

SUIT NO. 2142 OF 2005

Kesha Appliances P.Ltd and Ors. .....Plffs.
vs.
Royal Holdings Services Ltd
and Ors. .....Defnds.

Navroze Seervai a/w. Percy Gandy, Ketan Parekh,
Firdaus Puniwala i/b. Crawford Bayley & co.
for the plaintiffs.

Mr. Aspi Chinoy with Mr. Shrikant Doijode i/b.
M/s. Doijode Associates advocate
for defendant no.1.
K.G. Munshi i/b. Kanga and Co.
for defendant no.2.
Mr. Janak Dwarkadas a/w. P.K. Samdani
and Anuj Bhasme i/b. Wadia Gandy and Co.
for defendant no.3.
Mr. Virag Tulzapurkar i/b. Amerchand Mangaldas
and S.A. and Shroff for defendant no.4.
Mr. Gaurav Joshi a/w. Desai and Ashish Bhatia
i/b. J. Sagar Associates
for defendant no.6.
Dr. Abhishek Singhvi and Mr.F. Divitre i/b.
M/s. Doijode Associates, advocate
for defendant no.7.
Mr. Darius Khambhatta i/b. by Mr. Amol Doijode
for defendant no.8.
Mr. Dinyar Madon i/b. Mr. A.R. Bhole

for defendant no.9.
Mr. Shyam Mehta i/b. Rustomji Ginwalla
for defendant no.10.
Mr. Virendra Tulzapurkar i/b. Negandhi Shah &
Himaytullah for defendant no.11 and 12.

CORAM: S.U. KAMDAR, J.
DATE : 30th November, 2005.

JUDGMENT :

1. These two Notices of Motion are taken out for various interim reliefs in a suit which has been preferred by the shareholders of a company known as Spice Jet Ltd The defendant no.7 company carries on the business of running a domestic airlines. The 7th defendant company originally commenced the commercial operations on 2.5.1993. The said company was formally known as Modi Luft Ltd. Sometime in or about 20.6.94 a collaboration agreement was executed between erstwhile company known as Modi Luft with Lufthansa under which it was agreed that the operation and management of the airlines will be taken over by Lufthansa. However it seems that in 1996 the said arrangement between Modi Luft and Lufthansa came to an end and there were litigations filed between the defendant no.7

company which was then known as Modi Luft and Lufthansa. Ultimately an out of court settlement was arrived at between the defendant no.7 and Lufthansa on 13.8.1997. On 26.12.1997 the promoters of the defendant no.7 received an approval from Foreign Investments Promotions Board to raise U.S. $ 50 million for the issue and sale of cumulative redeemable convertible preference shares (shortly known as C.R.C.P.S.) In June 1998 a fresh business plan was prepared by the defendant no.7 to relaunch the airlines. On 29.6.98 the defendant no.7 received a no objection certificate from the Indian Ministry of Civil Aviation to import aircrafts. There were also proceedings between the defendant no.7 and various creditors in the Delhi High court in which the Delhi High court directed the 7th defendant to deposit a sum of Rs. 2 crores and a Provisional Liquidator was appointed to take charge of the assets of the 7th defendant. Between 1997 to 1999 the promoters tried to obtain funds from the foreign investors to relaunch the airlines.

2. Sometime in or about March 1999 the promoters found an investor known as Ajmal Khan of Canada and after discussion the said Ajaml Khan agreed to fund the defendant no.7. The said Ajmal Khan through his group of companies agreed to raise U.S.$ 35 million for relaunch of the airlines by way of equity investment of U.S.$ 17.5 million through its holding company, defendant no.1, and further U.S. $ 17.5 million through the bankers and financial institutions. It is the case of the plaintiff that the said Ajmal Khan agreed that the amount of 17.5.million U.S.$ would be offered by private placement and the entire proceeds from the said issue will be utilised by defendant no.1 for investing in cumulative redeemable convertible preference shares (C.R.C.P.S.). In furtherance of the aforesaid proposal it was decided that C.R.C.P.S. to be preferentially allotted to defendant no.1 and inrespect thereof a necessary resolution under Section 81(1)(a) of the Companies Act, 1956, should be passed allotting the said preference shares to the defendant no.1. It was

decided to hold a special general meeting of the defendant no.7 for passing the aforesaid resolution. Accordingly a notice was issued on 28.7.99 calling for the special general body meeting and resolution was passed under Section 81(1)(a) of the Companies Act, 1956. In its meeting held on 22.8.99 the shareholders authorised the company to issue 8,50,00,000 14% cumulative redeemable convertible preference shares of the face value of Rs.10/- each to the defendant no.1 which was then controlled by Ajmal Khan. Apart from the aforesaid private placement a further loan of 17.5 million U.S. $ was also required to be arranged from the bankers and leading financial institutions. It is the case of the plaintiff that while the private placement issue of the defendant no.1 was still open, two overseas corporation namely Malwood Holdings Ltd and Desmond Holdings Ltd controlled by one Ramesh S. Kansagra and Bhupendra S. Kansangra purchased the controlling interest in the defendant no.1 company from Ajmal Khan. Thus by transfer of the interest in the first defendant company the ownership rights in

C.R.C.P.S. of 17.5. million U.S. $ which was issued pursuant to the special resolution dated 27.8.99 in favour of the defendant no.1 stood transferred alongwith beneficial interest therein in favour of the Kansagra Brothers from Ajmal Khan. On 17.10.2000 the defendant no.1 remitted the amount of 17.5 U.S. Dollar and on the same day the defendant no.7 issued 8,10,77,500 14% C.R.C.P.S. to defendant no.1. This allotment was pursuant to the said resolution dated 27.8.99 passed under Section 81(1)(a) of the Companies Act. On 28.2.2001 the said 8,10,77,5000 C.R.C.P.S. were converted into equity shares of defendant no.7. Thus in effect the defendant no.1 acquired 50% stake in the 7th defendant company.

3. Thereafter in 2005 out of the share holding of 8,10,77,5000 shares the defendant no.1 sold 25,68,111 shares to the 2nd defendant, 63,95,643 shares to the 3rd defendant, 44,45,586 to 4th defendant, 43,35,000 shares to the 5th defendant and 29,01,563 to 6th defendant. Thus the holdings of the defendant no.1 in defendant no.7 was reduced

by the sale of the aforesaid shares from 8,10,77,500 to 4,83,27,500 shares. On 4.11.2004 the 7th dependant called an extra ordinary general meeting and proposed to raise the share capital from Rs.240 crores to Rs.325 crores with a view to enable the defendant no.7 to relaunch the airlines. It was also proposed to pass a special resolution under Section 81(1)(a) for preference shares allotment of 1 crore equity share/covertible warrants to defendant no.8 to 10 aggregating to 3 crore equity shares/covertible warrant of the face value of Rs.100/-. A notice was issued on 4.11.2004 for the aforesaid proposal and general body meeting was called on 22.12.2004. It is the case of the plaintiff that pursuant to the said notice dated 4.11.2004 on 21.12.2004 various allotments were made of equity shares to the defendant nos.8 to 10. On 28.2.2005 an extra ordinary general meeting was called for the purpose of passing a special resolution authorising the preferential allotment of 1.53 million unsecured fully convertible debentures of Rs.100/- each converted into 3.7 million of Rs.10/- each to such

a person as the board may decide. At the said meeting on 28.2.2005 the said preference shares allotment was approved.

4. In the aforesaid circumstances the plaintiffs have challenged the original allotment as well as transfer of the said shares. It is the case of the plaintiff that the preference share allotment of 8,10,77,500 C.R.C.P.S. to defendant no.1 by defendant no.7 in October 2000 is bad in law and violative of Regulation 12 of the Security and Exchange board of India (substantial acquisition of shares and Take Overs) Regulation 1997 and thus illegal. It has been further the case of the plaintiff that the special resolution passed on 27.8.99 at the Annual General Meeting of 27.8.99 is also illegal and invalid. It is the case of the plaintiff that the transfer of the controlling interest in the defendant no.1 from Ajmal Khan to Kansagra Brothers through the medium of two overseas corporate bodies namely Malwood Holdings Ltd and Desmond Holdings Ltd are illegal and unlawful. It is the case of the plaintiff that in

effect the Kansaagra Brothers took over the control of the defendant no.1 without giving full disclosure regarding the identity of the allotees for passing a valid general body resolution under Section 81(1)(a) of the Companies Act, 1956. It is further a case of the plaintiff that once the controlling interest was transferred in favour of the Kansagra Brothers then fresh resolution was required to be passed under Section 81(1)(a) authorising the allotment of C.R.C.P.S. in favour of the defendant no.1. It is further the case of the plaintiff that once the controlling interest in the defendant no.1 is transferred in favour of the Kansagra Brothers the exemption available under the Regulation 3(1)(c) is not available and thus the resolution passed under Section 81(1)(a) is in effect contrary to the Regulation 10 and 12 of the said Securities and Exchange Board of India (substantial acquisition of shares and Take Over) being the Take Over code. Thus in effect the plaintiffs are challenging in the present suit the preferential allotment of 8,10,77,500 C.R.C.P.S. by 7th defendant to 1st defendant by passing a

special resolution in October 2000. By prayer (a) of the suit a declaration is sought that the said resolution passed in October 2000 be declared invalid and in violation of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation 1997. By prayer (b) of the suit it is claimed that there should be a direction to the defendant no. 7 to cancel the said allotment of 8,10,77,500 C.R.C.P.S. and also subsequent conversion thereof to the equity shares. By prayer c(i) to c(v) a declaration has been sought that the sale of the shares of the defendant no.7 by defendant no.1 to defendant no.2 to 6 are illegal, null and void and nonest because of the original allotment in favour of the defendant no.1 itself being invalid. By prayer d(i) to d(v) the plaintiffs are seeking cancellation of the shares which has been sold in favour of the defendant no.2 to 6. By prayer (e) of the plaint a declaration is sought that the allotment by defendant no.7 of 50,00,000 covertible warrant of Rs.10/- each and 50,00,000 equity shares of Rs.10/- each to the defendant no.8 pursuant to the resolution dated 6.12.2004 is without authority

of law, illegal, null and void and nonest. Similarly by prayer e(ii) to e(iii) reliefs are sought against similar allotment of convertible warrant and equity shares of 50,00,000 each in favour of the defendant no.9. By prayer e(iii) an allotment in favour of the defendant no.10 of 1,00,000 convertible warrant of Rs.10/- each and 50,00,000 convertible warrant of Rs.10/- each by resolution dated 6.12.2005 is sought to be declared null and void ab-initio. By prayer clause (f) a direction is sought for cancellation of the allotment in favour of the defendant no.8,9 and 10. By prayer (g) a further allotment of 1.53 million unsecured fully convertible debentures of Rs.100/- each convertible into 3.7 million of Rs.10/- each to defendant no.11 and 12 is sought to be declared as without authority of law and illegal. By prayer (h) a cancellation of the said allotment has been sought. Prayer (i) on which great reliance has been placed seeks rectification of the share register on the basis of grant of each of the aforesaid prayers. The said prayer (i) read as under :

(i) this Hon'ble Court be pleased to order and direct Defendant Nos.7 to rectify its Register of Members/Debenture Holders by striking out/removing the names of Defendant nos.1 to 6 and 8 to 12 therefrom as follows :

(i) Defendant no.1 quo its shareholding of 4,83,27,500 equity shares of Rs.10 each.

(ii) Defendant no.2 qua its shareholding of 25,68,111 equity shares fo Rs.10/-each.

(iii) Defendant no.3 qua its shareholding of 63,95,643 equity shares of Rs.10 each.

(iv) Defendant no.4 qua its shareholding of 44,45,586 equity shares of Rs.10 each.

(v) Defendant no.5 qua its shareholding of 43,25,000 equity shares of Rs.10 each.

(vi) Defendant no.6 qua its shareholding of 29,01,563 equity shares of Rs.10 each.

(vii) Defendant no.8 qua its shareholdng of 50,00,000 convertible warrants of Rs.10 each.

(viii) Defendant no.9 qua its shareholding of 50,00,000 edquity sahres of Rs.10 ech and holding of 50,00,000 convertible wrrants of Rs.10 each.

(ix) Defendant no.10 qua its shareholding of 50,00,000 equity shares of Rs.10 each and holding of 50,00,000 convertible warrants of Rs.10 each.

(x) Defendant Nos.11 and 12 qua its holding of 1.53 million unsecured fully convertible debentures of Rs.100 each, convertible into 3.7 million shares of Rs.10 each.

5. Prayer (j) onwards are the interim prayers in the present suit. Thus in effect in the present suit what is sought is a cancellation of various allotment of shares in the 7th defendant company and subsequent transfer thereof and also further allotment of the share as in violation of the SEBI Act and the said Takeover Regulations which is popularly known as ‘TakeOver Code’. After seeking declaration that allotment and/or transfer being illegal the plaintiff has sought the cancellation of the said allotments as well as rectification of the said register on such cancellation by prayer clause (i) of the present suit.

6. At the ad-interim hearing of both the aforesaid motions the defendant no.4 raised the

issue as to the jurisdiction of this court under Section 9A of the CPC by filing an affidavit. By my order dated 22.9.2005 I have framed the preliminary issue as to the jurisdiction which reads as under :

> ". Whether this court has jurisdiction in the light of Section 15Y and Section 20A of the SEBI Act, 1992 read with relevant rules and Regulations thereof ?

7. I have heard the parties at length on the said preliminary issue as to the jurisdiction of this court to entertain the present suit in the light of bar contained in the provisions of the SEBI Act, 1992. Before I deal with the rival submission of the parties it is necessary that the relevant provisions of the Act and regulations must be set out for the purpose of appreciation of the rival contentions.

PENALTIES AND ADJUDICATION :

15I Power to adjudicate

(1) For the purpose of adjudging under

sections 15A, 15B, 25C, 25D, 15E, 15F, 15G [15H, 15HA and 15HB] the Board shall appoint any officer not below the rank of a Division chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing penalty.

(2) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

15Y Civil court not to have jurisdiction

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officers appointed under this Act or a securities Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority inrespect of any action taken or to be taken in pursuance of any power conferred by or under this Act.'

S.21 Savings

Nothing in this Act shall exempt any person from any suit or other proceedings which might, apart from this Act, be brought against him.

S.32 Application of other laws are not barred

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997

3. Applicability of the regulation.

(1) Nothing contained in regulations 10,11 and 12 of these regulations shall apply to :

(a) allotment in pursuance of an application made to a public issue :

Provided that if such an allotment is made pursuant to a firm allotment in the public issues, such allotment shall be exempt only if full disclosures are made in the prospectus about the identity of the acquirer who has agreed to acquire the shares, the purpose of acquisition, consequential changes in voting rights, shareholding pattern of the company and in the board of directors of the company, if any, and whether such allotment would result in change in control over the company.

(b) allotment pursuant to an application made by the shareholder for rights issue,

(i) to the extent of his entitlement; and
(ii) up to the percentage specified in regulation 11:

Provided that the limit mentioned in sub-clause (ii) will not apply to the acquisition by any person, presently in control of the company and who has in the rights letter of offer made, disclosures that they intend to acquire additional shares beyond their entitlement, if the issue is undersubscribed ;

Provided further that this exemption shall not be available in case the acquisition of securities results in the change of control of management;

(c) ....

(d) allotment to the underwriters pursuant to any underwriting agreement

(e) inter se transfer of shares amongst-

[(i) group coming within the definition of group as defined in the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) where persons constituting such group have been shown as group in the last published Annual Report of the target company;]

(ii) relative within the meaning of section 6 of the Companies Act, 1956 (1 of 1956);

(iii) (a)Indian promoters and foreign collaborators who are shareholders;

(b)Promoters

[Provided that the transferor(s) as well as the transferee(s) have been holding shares in the target company for a period of at least three years prior to the proposed acquisition;]

10. Acquisition of [fifteen] per cent or more of the shares or voting rights of any company.

. No acquirer shall acquire shares or voting rights which (taken together) with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise [fifteen] per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.

12. Acquisition of control over a company.

. Irrespective of whether or not there has been any acquisition of shares or voting rights in a company, no acquirer shall acquire control over the target company, unless such person makes a public announcement to acquire shares and acquire such shares in accordance with the regulations.

. Provided that nothing contained herein shall apply to any change in control which takes place in pursuance to a [special] resolution passed by the shareholders ion a general meeting :

. [Provided further that for passing of the special resolution facility of

voting through postal ballot as specified under the Companies (Passing of the resolutions by Postal Ballot) Rules, 2001 shall also be provided.]

. [Explanation-For the purpose of this regulations, acquisition shall included direct or indirect acquisition of control of target company by virtue of acquisition of companies, whether listed or unlisted and whether in India or abroad.]

44. Directions by the Board :

. Without prejudice to its right to initiate action under Chapter VIA and Section 24 of the Act, the Board may, in the interest of securities market or for protection of interest of investors, issue such directions as it deems fit including :-

(a) directing appointment of a merchant banker for the purpose of causing disinvestment of shares acquired in breach of regulation 10, 11 or 12 either through public auction or market mechanism, in is entirety or in small lots or through offer for sale;

(b) directing transfer of any proceeds or securities to the Investors Protection Fund of a recognised stock exchange;

(c) directing the target company or depository to cancel the shares where an acquisition of shares pursuant to an allotment is in breach of regulation 10,11 or 12.

(d) directing the target company or the depository to give effect to transfer or further freeze the transfer of any such shares and not to permit the

acquirer or any nominee or any proxy of the acquirer to exercise any voting or other rights attached to such shares acquired in violation of regulation 10, 11 or 12.

(e) debarring any person concerned from accessing the capital market or dealing in securities for such period as may be determined by the Board.

(f) directing the person concerned to make public offer to the shareholders of the target company to acquire such number of shares at such offer price as determined by the Board;

(g) directing disinvestment of such shares as are in excess of the percentage of the shareholding or voting rights specified for disclosure requirement under regulation 6,7 or 8;

(h) directing the person concerned not to dispose of assets of the target company contrary to the undertaking given in the letter of offer;

(i) directing the person concerned, who has failed to make a public offer or delayed the making of a public offer in terms of these regulations, to pay to the shareholders, whose shares have been accepted in the public offer made after the delay, the consideration amount alongwith interest at the rate not less than the applicable rate of interest payable by banks on fixed deposits.]

4. Holding of inquiry.

(1) In holding an inquiry for the purpose of adjudging under Sections 15A, 15B, 15C, 15D, 15E, 15F, 15G and

15H whether any person has committed contraventions s specified in any of section 15A, 15B, 15C, 15D, 15E, 15F, 15G and 15H, the adjudicating officer shall, in the first instance, issue a notice to such person requiring him to show cause within such period as my be specified in the notice (being not less than fourteen days from the date of service thereof) why an inquiry should not be held against him.

(2) Every notice under sub-rule (1) to any such person shall indicate the nature of offence alleged to have been committed by him.

(3) If, after considering the cause, if any, shown by such person, the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his lawyer or other authorised representative.

(4) On the date fixed, the adjudicating officer shall explain o the person proceeded against or his lawyer or authorised representative, the offence, alleged to have been committed by such person indicating the provisions of the Act, rules or regulations in respect of which contravention is alleged to have taken place.

(5) The adjudicating officer shall then give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to a future date and in taking such evidence the adjudicating officer shall not be bound to observe the provisions of the

Evidence Act, 1872.

Provided that the notice referred to in sub-rule (3),l and the personal hearing referred to in sub-rules (3), (4) and (5) may, at the request of the person concerned, be waived.

(6) While holding an inquiry under this rule the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which , in the opinion of the adjudicating officer, may be useful for or relevant, to , the subject matter of the inquiry.

(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the adjudicating officer, the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

SECURITIES AND EXCHANGE BOARD OF INDIA PROCEDURE FOR HOLDING INQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002

4. Enquiry for contravention of the regulations :

. An enquiry for the purpose of passing an order under these regulations may be held for contravention of any of the provisions of -

(a)the Securities and Exchange Board of India (Stock-brokers and

Sub-brokers) Regulations, 1992;

(b)the Securities and Exchange Board of India (Insider Trading)Regulations, 1992.

(c)the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.

(d)the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993.

(e)the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993.

(f)the Securities and Exchange Board of India (Underwriters) Regulations, 1993.

(g)the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1992.

(h)the Securities and Exchange Board of India (Bankers to an Issue) Regulations, 1994.

(i)the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995.

(j)the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995.

(k)the Securities and Exchange Board of

India (Custodian of Securities) Regulations, 1996.

(l)the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996.

(m)the Securities and Exchange Board of India (Venture Captial Funds) Regulations, 1996.

(n)the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996.

(o)the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

(p)the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 1998.

(q)the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999

(r)the Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999.

(s)the Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 1992.

5. Appointment of enquiry officer.

(1) Where it appears to the chairman or a member designated in this behalf that

an intermediary has contravened any of the provisions of a Regulation referred to in Regulation 4, the Chairman or the member, as the case may be, may appoint an enquiry officer for the purpose of holding an enquiry into the matter :

Provided that the Chairman or the member, as the case may be, may appoint more than one enquiry officers if the subject matter of enquiry contains technical or complicated questions of facts or law who will function as a bench to be presided by the senior amongst them.

(2) No officer who has dealt with the matter or who is directly or indirectly interested, or has an interest, in that intermediary or who has conducted an investigation or inspection in respect of the alleged violation shall be appointed as an enquiry officer.

12. Presenting Officer.

(1) The Chairman or a member designated in this behalf may appoint a presenting officer in an enquiry.

(2) The enquiry officer, if he considers it necessary, may advise the Board to appoint a presenting officer for the purpose of the enquiry and the Chairman or a member designated in this behalf on receipt of such advice shall appoint a presenting officer.

8. For the purpose of ascertainment of jurisdiction of this Court under section 9A of

Civil Procedure Code it is first required to consider the provisions of section 9 of the Civil Procedure Code. The provisions of section 9 of the CPC interalia provides that the civil court shall have jurisdiction to entertain and try all the matters save and accept the ones which are expressly or impliedly barred under any statute. Thus whether the provision of section 15(y) and 20(a) of the SEBI Act, 1992 expressly bars the present suit or not is the inquiry which is required to be undertaken.

9. Mr. Virag Tulzapurkar learned counsel for defendant no.4 has raised the objection as to the jurisdiction of this court to entertain and hear the present suit. He has drawn my attention to the provisions of Section 15Y of the Securities Exchange Board of India Act, 1992 (hereinafter for the sake of brevity referred to as ‘the SEBI Act’) and pointed out that no civil court shall have jurisdiction to entertain any suit or proceedings inrespect of any matter which the adjudicating officer appointed in this act or the Securities

Appellate Tribunal constituted under this Act is empowered by/or under this Act to determine and no injunction shall be granted by any court or other authority inrespect of any action taken or to be taken in pursuance of any power conferred by/or under the Act. The learned counsel for the defendant no.4 has contended that in the light of the aforesaid bar contained under Section 15Y this court ought not to exercise any jurisdiction to entertain and try the suit. He has contended that the suit is solely based on a contention that while allotment of the shares and/or transfer thereunder there has been violation of the provisions of what is known as Take Over Code (Securities and Exchange Board of India (Substantial Acquisition of Shares and Take Overs) Regulation 1997 (hereinafter for the sake of brevity referred to as Take Over Regulations). It has been contended that for breach of any such Take Over Regulation under Section 15H and 15I the Adjudicating Officer has been appointed to take cognisance thereof. Apart therefrom under Regulation 44 of the Take Over Regulations the power is conferred on the board to

pass necessary directions including direction to cancel the shares when acquisition of shares is pursuant to an allotment in breach of the said Take Over Regulations and in cases of a transfer according to the learned counsel the said clause (d) of the Regulation 44 provides the remedy for violation of the said Take Over Regulations. The learned counsel has contended that in view of the express bar contained under Section 15Y and 20A of the SEBI Act this court has no jurisdiction to entertain the suit which is based on a sole contention that in allotment and/or transfer of shares there has been a breach of the Take Over Regulations and thus allotment and/or transfer is illegal, unlawful and or nullity.

10. Dr. Abhishek Singhvi, Learned counsel for the Respondent no.7 has also supported the contention of the learned counsel for the defendant no.4 and has contended that infact the provisions of Section 9 of the CPC gives this court the jurisdiction to try the suit but he contends that jurisdiction can be excluded where the cognisance

of the type of case is either expressly or impliedly barred by any special statute. The learned counsel for defendant no.7 has contended that in the present case there is an express bar as contended under Section 15Y and 20A of the SEBI Act and therefore this court cannot exercise jurisdiction to entertain the suits under Section 9 of the CPC. Learned counsel has further contended that even otherwise the provisions of the SEBI Act is a complete code by itself and it provides for right as well as remedy thereunder and thus the jurisdiction of this court is otherwise also impliedly barred and this court ought not to entertain the present suit. He has drawn my attention to the provisions of Section 11 of the SEBI Act while analysing the scheme of Act and pointed out that it provides for power and functions of the board. He has particularly drawn my attention to the provisions of sub-section (4) of Section 11 of the said Act which inter-alia provides that it is the board who has power to protect the interest of the investor in securities and to permit the development and regulate the

securities market by such measure as it thinks fit and while doing so inter-alia it has been conferred with a power under section 11H to regulate substantial acquisition of shares and or taking over of the companies. He has also drawn my attention to the provisions of Section 11B which inter-alia provides for power to issue direction to the board and it has been contended that powers under Section 11B are omnipotent and the board can issue directions inrespect of any actions which the board is empowered to do under the Act, rules, regulations and various other provisions under which the board is empowered to take action. He has also drawn my attention to section 12 sub-clause (f) under which once the provisions are made that no person shall directly or indirectly acquire control of any company or security more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulation made under the Act. Learned counsel for defendant no.7 thereafter drew my attention to the provisions of Section 15H and

15I of the said Act which provides inter-alia for breach of Takeover Regulation and consequent inquiry and penalty. He has thereafter drawn my attention that after the order is passed under 15I the remedy of a person is by way of appeal to the Securities Appellate Tribunal under Section 15T and appeal therefrom lies to the Supreme Court under Section 15Z of the said Act. Learned counsel has thus contended that the scheme by itself provides for a complete code and therefore this court ought not to entertain any suit pertaining to the subject matter which is arising under the SEBI Act and for which the SEBI is empowered to take action. He has further contended that the provisions of Section 15Y and 20A which contain an express bar by itself are sufficient to non-suit the plaintiff in the present case but he contends that in any event the bar contained under Section 15Y and 20A must be looked into the context of the provisions which are set out hereinabove so as to indicate that the bar provided under the aforesaid sections 15Y and 20A from civil court entertaining any issue because the scheme of the Act itself provides for rights as

well as remedies thereunder. Learned counsel for the defendant no.7 has contended that once there is a right as well as remedy both are provided by such a special statute then even in absence of express bar the court ought not to go into the said disputes and must refer the party to the forum prescribed under the Act so as to effectively determine the disputes between the parties. Learned counsel has thereafter drawn my attention to Regulation 44 of Takeover Regulations and has contended that Clause (C) and (d) thereof provides for all the remedies including the nature of remedy sought in the present suit. Learned counsel for defendant no.7 has contended that sub-Clause(c) and (d) of Regulation 44 takes into account the nature of relief sought by the plaintiff in the present suit and therefore also the suit ought not to be entertained by this court when especially an expert body like SEBI is conferred with the special power under the SEBI Act, 1992,

11. Learned cousnel has thereafter contended that the provisions of SEBI as well as the

provisions of the Take Over Regulations are not meant for individual shareholder but are meant as a remedy in favour of the investors as a class and therefore the remedy which is prescribed under the Act is also of the nature which gives relief to the investors as a class. He has further contended that it is also open for a individual shareholder to file a complaint with SEBI for breach of any of the provisions of the Takeover Regulations and SEBI has ample power under the statute to entertain and adjudicate such a complaint.

12. Learned counsel for defendant no.7 has drawn my attention to the law as laid down by the apex court in so far as the express exclusion and implied exclusion is concerned. He has drawn my attention to the judgment of the apex court in the case of **Union of India and Anr vs. Delhi High Court Bar Association and Ors reported ion AIR 2002 S.C. 1479** and contended that the parliament is competent to enact the legislation so as to provide for an expert tribunal and bar the jurisdiction of the civil court. It has been contended that in the

light of the developing economy it is necessary that more and more tribunals are constituted so as to effectively provide speedy justice to the various parties. He has drawn my attention to the judgment of the Supreme Court in the case of **Vatticherukuru Village Panchayat vs. Nori Venkatarama Deekshithulu and Ors. reported in 1991 Supp (2) S.C. 228** and particulary para-17 and 18 of the judgment :

> "17. All communal lands, porambakes, tanks etc., in inam villages shall vest in the government under Section 2-A; of Inams Act free from all encumbrances. Section 3 determines the inam lands whether held by the individual or the institution, provides procedure for determination and Section 3(4) gives right of appeal. Section 4 converts those lands into ryotwari lands and accords entitlement to grant of ryotwari patta. Section 5 gives power to restitute the lands to the tenants in occupation though they were ejected between specified dates. Section 7 gives power to grant ryotwari pata to the tenants to the extent of two-thirds share int he land and one-third to the landholder. If it was held by the institution, two third shares would be to the institution and one-third to the tenants. Section 8 grants right of permanent occupancy to the tenants in inam lands held by institutions. Section 9 prescribes procedure for eviction of the tenants having right of permanent occupancy. Section 10-AS provides right to

ryotwari patta to tenants in a ryotwari or zamindari village with the right of permanent occupancy, even in the lands, held under customary right etc. Section 12 fastens liability on the ryotwari pattadars to pay land assessment. Section 13 gives exclusive power of jurisdiction to Tehsildar, the Revenue Court and the Collector to try the suit as per the procedure as of a civil court under the code of civil Procedure. Section 14 of the Inams Act reads thus :

> "14. Bar of jurisdiction of civil courts- No suit or other proceedings shall be instituted in any civil courts to set aside or modify an decision of the Tahsildar, the Revenue Court, or the Collector under this Act, except where such decision is obtained by misrepresentation, fraud or collusion of parties."

> "14-A(1) Notwithstanding anything contained in this Act, the Board of Revenue may, at any time either suo motu or an application made to it, call for and examine the records relating to, any proceedings taken by the Tahsildar, the Revenue Court or the Collector under this Act for the purpose of satisfying itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision made or order passed therein and if, in any case, it appears to the Board of Revenue that any such decision or order should be modified, annulled, reversed or remitted for consideration, it may pass orders, accordingly.

(2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representation..

15. Act to override other laws.- Unless otherwise expressly provided in this Act the provisions of this Act and of any orders and rules made thereunder shall have effect nothwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

18. The constitution intends to herald an egalitarian social order by implementing the goals of socio-economic justice set down in the preamble of the Constitution. In that regard the constitution created positive duties on the State in Part IV towards individuals. The Parliament and the state Legislatures made diverse laws to restructure the social order; created rights in favour of the citizens; conferred power and jurisdiction on the hierarchy of tribunals or the authorities constituted thereunder and gave finality to their orders or decisions and divested the jurisdiction of the established civil courts expressly or by necessary implication. The Inam Act is a step in that direction as part of Estate Abolition Act. Therefore, departure in the allocation of the judicial functions would not be viewed with disfavour for creating the new forums and entrusting the duties under the statutes to implement socio-economic and fiscal laws. We have to consider, when questioned, why the legislature made this departure. The reason is obvious. The tradition bound

> civil courts gripped with rules of pleading and strict rules of evidence and tardy trial, four tier appeals, endless revisions and reviews under CPC are not suited to the needed expeditious dispensation. The adjudicatory system provided in the new forums is cheap and rapid. The procedure before the tribunal is simple and not hide-bound by the intricate procedure of pleadings, trial, admissibility of the evidence and proof of facts according to law. Therefore, there is abundant flexibility in the discharge of the functions with greater expeditions and inexpensiveness. "

13. He has also drawn my attention to the judgment of **S. Vanathan Muthuraja vs. Ramalingam alias Krishnamurthy Gurukkal and Ors reported in 1997(6) S.C. 143** and particularly para-3 of the judgment :

> ". Where there is an express bar of jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary that the statute creates a

> special right or liability and provides remedy for the determination of the right or liability shall be determined by the tribunal so constituted and the question whether remedies are normally associated with the action in civil courts or prescribed by the statutes or not require examination. Therefore each case requires examination whether the statute provides right and remedy and whether the scheme of the Act is that the procedure provided will be conclusive and thereby excludes the jurisdiction of the civil court in respect thereof."

14. Learned counsel by citing the aforesaid judgments has contended that a particular statute can provide for a bar of the jurisdiction of the civil courts and in that event the court would not entertain any dispute which can be effectively considered under the said statute. He has also drawn my attention to para-22 of the judgment in which it has been held that in cases exclusion of the civil court jurisdiction is expressly provided for under the statute then the consideration as to the scheme of the statute in question and/or the adequacy and/or the sufficiency of the remedy provided for by it, can be relevant but cannot be

decisive. He has contended that if there is an express bar in a statute then in that event the principles of ascertaining that whether there is a implied bar of the civil court jurisdiction or not is infact an irrelevant consideration. He has contended that on both the footing that there is a express bar contained under Section 15Y and 20A of the SEBI Act and also on the basis that the scheme is a complete code by itself and the remedy including the remedy sought by the present suit can be effectively obtained by the plaintiff before the SEBI are the grounds on which this court must hold that this court has no jurisdiction to entertain and try the present suit.

15. Mr. Aspi Chinoy, learned counsel for Defendant no.1 has supported the argument of Mr. Tulzapurkar and Mr. Singhvi and has taken me throught the following averments of the plaint. which are as under :

> ‘". It is submitted that no such resolution having been passed by the

members/shareholders of Defendant no.7, the acquisition of shareholding by defendant no.1, which was at the time of the acquisition admittedly under the control of the Kansagra Brothers was and is,illegal void ab-initio and non-est being ex-facie in flagrant contravention of Regulation 10 read with the explanation to Regulation 11 of the Takeover Code. The plaintiffs state and submit that by acquiring control over Defendant no.7 sometime in Oct, 2000, Defendant no.1 has also violated Regulation 12 of the Takeover Code, rendering the same illegal, void ab-initio and non-est."

." The plaintiffs state and submit that Defendant Nos.8 to 10 have violated Regulation 12 of the Takeover Code by illegally acquiring control over Defendant no.7 without making a public announcement as envisaged under the Takeover Code. Such an announcement, as envisages under the Takeover code, is a statutory mandatory condition precedent to a Takeover. Violation of these mandatory provisions and pre-requisites renders all actions taken illegal, without the authority of law, contrary to law, null and void ab-inition and non-est, in the eyes of law."

." In view of the abovementioned facts, the plaintiffs submit that clearly, the preferential allotment of 8,10,77,500 CRCPS to Defendant no.1 by Defendant no.7 in October, 2000 is bad in law, violative of the provisions of the SEBI Takover Code, illegal, null and void. The plaintiffs submit that the said CRCPS have been issue pursuant to a Special Resolution passed at the Annual General Meeting of Defendant no.7 on 27th August, 1999. At the time of passing of the said special resolution the defendant no.7 was under the control of Mr. Ajmal Khan and not of Kansagra Brothers through the medium of their 2 OCBs, Malwood

> Holdings Ltd and Desmond Holdings Ltd. It is submitted that when the Kansagra Brothers took over control over Defendant no.1, a fresh resolution under section 81(1A) giving full disclosure regarding identity of the allotee necessarily had to precede the allotment of CRCPS to Defendant no.1".
>
> ." The plaintiffs submit that Defendant nos.8 to 10 by acquiring control over Defendant no.7 have violated Regulation 12 of the Takeover Code. The Takeover code was triggered at the time of an agreement was reached to enable Defendant no. 8 to 10 to acquire control over Defendant no.7. In accordance with Reg.14(3), Defendant no.8 to 10 were required to make a public announcement not later than 4 days after entering into the agreement to acquire shares/control over Defendant no.7 which they never did."
>
> ." As Defendant no.8 to 10 failed and/or neglected to make the said announcement, the allotment of 2,00,000 convertible warrants and 1,0,00,000 equity shares to Defendant Nos.8 to 10 is clearly illegal, in violation of the Takeover Code, null and void ab-initio and non-est."

. He has contended that looking at the aforesaid averments made by the plaintiffs and the prayers sought it is clear that the only point raised is that the allotment and/or transfer of the shares is infact contrary to and in breach of the Takeover Regulations. In the present suit no

individual right of the plaintiff has been agitated and the relief sought in the prayers are based only on the contention that there is a breach of the Takeover Regulations. Learned counsel has therefore contended by supporting the arguments of Defendant no.4 and 8 that this court has no jurisdiction to entertain and try the present suit.

16. Mr. Seervai Learned counsel for the plaintiff has on the other hand contended that this court has jurisdiction to entertain and try the present suit. He has contended that the nature of cause of action and the nature of the suit as framed by the plaintiff in the present suit is identical to the nature of the suit and nature of cause of action which came up for consideration before this court in the case of **M. Sreenivasulu Reddy v. Kishore R. Chhabria reported in 2002 (Bom) Vol.109 page 18.** He has further contended that the issue as to the jurisdiction of this court vice-a-versa Section 15Y and 20A of the SEBI Act was also raised before the learned single judge and the division bench of this court. He has further

relied upon the judgment of the Division Bench in the case of **Shirish Finance and Investment P.Ltd vs. M. Sreenivasulu Reddy and Ors reported in 2002 (Bom) 913 Vol.109** and has contended that in a detailed judgment of the learned Single Judge it has been held that this court has jurisdiction to entertain and try the present suit of identical nature even though there is an express bar contained under Section 15Y and 20A of the SEBI Act. He has further contended that the view of the learned single Judge has been upheld by the division bench in the aforesaid judgment and in view thereof the issue of jurisdiction raised by defendant no.4 and supported by the defendant no.1 and 8 is no longer resintergra. Learned counsel for the plaintiff has further contended that the judgment of the division bench of this court is a law declared which is binding on me and I must follow the view expressed by the division bench and reject the contention of the defendant that this court has no jurisdiction to entertain and try the present suit in view of Section 15Y and 20A of the SEBI Act. He has taken me through various para’s

of the judgments of the learned single judge and division bench of this court to support his contention that the contention of jurisdiction was squarely raised before the court and has been squarely answered to hold that this court has jurisdiction irrespective of the fact that Section 15Y and 20A of the SEBI bars the jurisdiction of this court to entertain and try the nature of the suit which has been presented before me. Learned counsel has further contended that infact the provisions of Section 15Y and 20A have been reproduced in the judgment of both the learned single judge and the division bench and he contended that though the said section has not been considered while giving reasoning in the judgment still the view expressed by the single judge and the division bench is a binding view which I must follow and reject the contention of the defendant no.4. He has drawn my attention to page 53 of the judgment of the learned single judge where the provisions of Section 15Y and 20A of the SEBI Act are noticed. He has thereafter drawn my attention to page 55 where the provisions of the Takeover

Regulations are also noticed. He has thereafter drawn my attention to page 79 of the judgment wherein the court has formulated the issues which require determination of this court. He has contended that this court has already held that the issue as to the determination of the frontiers of the jurisdiction of the SEBI in interpretation of various concepts which are used under the SEBI Act and Regulations framed thereunder is an issue which requires to be determined by the Civil court and not by the SEBI. He has contended that in the present case also he has raised the issue as to the interpretation of the Regulation 3(1)(c) of the Takeovers Regulations and to determine the said interpretation of the regulation, it is only the civil court who has jurisdiction and not the SEBI board. It has been contended that in the judgment of the learned single judge in the case of M. Sreenivasulu Reddy (supra) this court has already held that SEBI has no jurisdiction to interpret the provisions of the Act and Regulations and/or to determine the frontiers of the SEBI Board to exercise the power under the Act. Similarly he has

also drawn my attention to the judgment of the division bench where also the provisions of Section 15Y and 20A of the SEBI Act were noticed by the Division bench in the judgment of Shirish finance and Investment P.Ltd (supra). The provisions of the said section are set out at page 944, 945 of the judgment.

17. He has thus contended that both the aforesaid judgments are the authority on the proposition that irrespective of the express bar contained under the provisions of Section 15Y and 20A of the SEBI this court still has jurisdiction to entertain and try the present suit.

18. All the learned counsels for the defendants on the other hand have contended that infact the argument of the learned counsel for the plaintiff is not only totally erroneous but contrary to the aforesaid judgment itself. Learned counsel has drawn my attention to the judgment of the single judge in the case of M. Sreenivasulu Reddy (supra) particularly page-66 to 70 thereunder. It has been

pointed out that though the issue as to the jurisdiction being barred by virtue of Section 15Y and 20A of the Act was raised, however on an objection raised by the plaintiff thereunder that the issue of jurisdiction must be framed and determined as per the specific provisions of Section 9A of the CPC learned counsel for the defendants in that case had given up the said issue as to the jurisdiction expressly. My attention has been drawn by the learned counsel for the defendants to the following para's of the judgment of the learned single judge.

> . In view of the insistence of Mr. Nariman on the basis of the aforesaid authorities, Mr. Chidambaram and Mr. Doctor appearing for the defendants pointed out that their plea was not one of outster jurisdiction. Section 9A of the Civil Procedure Code (as concluded in Mahrashtra) contemplates what is known as ouster of jurisdiction. They submitted that the defendants were only insisting that the discretion to exercise jurisdiction may not be exercised looking to the fact that the concerned disputes would appropriately be tried either by the company law board or by the SEBI. The submission of the defendants was that the jurisdiction of the civil courts with that of the authorities concerned was a somewhat overlapping and

concurrent jurisdiction. The judgments of the Supreme court from *Dhulabhai vs. State of Madhya Pradesh, AIR 1969 SC 78,* onwards were referred to by both the learned counsel. In that context, mr. Nariman also drew my attention to a letter on behalf of the defendants written but their advocates to the SEBI requesting it to defer the determination inasmuch as the High court was seized of the matter. That letter dated January, 22, 1999 is placed at page 487 in volume III-A of the compilation. mr. Nariman therefore submitted that in case the defendants were raising he issue of jurisdiction, then in his view the issue will have to be granted and on which he may have to consider whether evidence should be recorded. alternatively, the defendants must agree that they were not pressing the issue in the manner in which it was worded in para 1(g) of the above referred affidavit in reply of defendant no.11.

. In view of the objections raised by Mr. Nariman and after due deliberations and instructions, the defendant filed a joint affidavit of defendant no.1 and defendant no.11 affirmed on March, 16, 1999, stating therein that for the reasons contained therein clause G of the para. 1 was not being pressed. The said affidavit of defendant no.1 reads as follows :

"1. I say that I have filed an affidavit dated December 21, 1998, in reply to Notice of Motion no. 3120 of 1997. In that affidavit in reply, in clause G of paragraph 1 have stated as under :

G.This Hon’ble court does not have jurisdiction to try, entertain and disposed of this suit’.

2. Similarly, in the affidavit to oppose grant of ad-interim relief filed by me in Notice of Motion no. 3932 of 1998 also dated December 21, 1998, in paragraph 1A, I have stated as under :

'1A. I submit that this hon'ble court does not have jurisdiction to entertain, try and dispose of this suit'.

3. In connection with the above submissions in the said affidavits, I wish to clarify and state as under :

4. If the company had filed the present suit, the defendants could and would have contended that the jurisdiction of this hon'ble court was ousted. Defendants would have relied on *Ammonia Supplies Corporation (P) ltd vs. Modern Plastic Containers P.ltd (1998) 94 Comp Case 310 AIR 1998 SC 3153,* read with section 111A(2) and (3).

5. However it is Mr. Reddy (plaintiffs) a shareholder who has filed the suit alleging violation of his civil rights. Such a suit can be filed before a civil court (which has territorial and pecuniary jurisdiction). In answer, the defendants urge, among other grounds that -

(i) At an interlocutory stage :

(a) that this hon'ble court should not in exercise of its discretion, grant any interim relief to Mr. Reddy (plaintiffs) since there is another forum which could be moved by the company for rectification of the register : and

(b) that as Mr. Reddy (plaintiffs) is only a name lender for the company and no civil rights of Mr. Reddy are infringed, no relief should be granted to him.

These are some factors amongst others which the court should consider while exercising its discretion in refusing the interim relief.

(ii) as the trial of the suit :

That Mr. Reddy (plaintiffs) does not have any civil right to oppose registration or to have the register rectified and hence his suit should be dismissed.

In the light of the above, the submissions contained in Ground G of para 1 and in para 1-A of my two aforementioned affidavits both dated December 21, 1998, are not pressed."

20. Similarly the same issue was agitated but once again given up before the division bench and my attention has been drawn to page 958 and 959 of the judgment which reads as under :

. At this stage, it is necessary to notice the objection taken by defendants Nos.1 and 11 in Notice of motion no. 3120 of 1997 to the effect that this court did not have jurisdiction to try, entertain and dispose

of the suit. It was submitted on behalf of defendants nos.1 to 11 that so far as the question of registration or non-registration of shares is concerned, the plaintiffs could approach the company law board under section 111A of the Companies Act, which the competent forum to go into such matters. similarly, the allegations regarding violation of the SEBI regulations could have been gone into by SEBI which was the competent authority to go into those allegations regarding violation of the SEBI regulations could have been gone into by SEBI which was the competent authority to go into those allegations, particularly when the proceedings was arising out of the notices issued by it. When this question of jurisdiction was raised, Mr. Nariman, learned counsels appearing on behalf of the question of jurisdiction, viz. whether the defendants were pressing the plea of jurisdiction. According to Mr. Nariman, if the plea of lack of jurisdiction was to be urged and decided, an issue had to be framed and decided at that stage itself. He, therefore, insisted that if the court was required to frame an issue on the question of jurisdiction, the same may be framed and decided as a preliminary issue having regard to the specific provisions of section 9A of the Code of Civil Procedure, 1908, as amended by a Maharashtra State amendment., Unless an issue was framed, the court could not go into the question of jurisdiction and record a finding thereon. At, best the court could record submissions of rival parties without recording its finding on the issue of jurisdiction. If the plaintiffs insisted that a finding be recorded on the question of jurisdiction, the court must first frame an issue and thereafter decided the same, as contemplated by section 9A of the Code of Civil Procedure, as amended in its application to the State of Maharashtra.

Particular reliance was placed on two decisions of this court in *Meher Singh vs. Deepak Sawhny (1998) 4 ALL MR 536 and Institue Indol Portuguese v. Borges (1958) 60 Bom.L.R. 660*. Reliance was also placed on the judgments of a single judge of this court in *Ignatius D'counha vs. (Dr.) Father Denis (1993) 2 Mah.L.J. 1441*

. In the light of the submissions urged by mr. Nariman, the defendants replied that their plea was not one of outster of jurisdiction, which could be tried as a preliminary issue in view of section 9A of the Code of Civil Procedure. Their submission was that the court may not exercise its discretionary jurisdiction in view of the fact that the aforesaid disputes could appropriately be agitated either before the Company Law Board or the SEBI. The jurisdiction of the civil court and that of the authorities concerned, was somewhat overlapping and concurrent. Mr,. Nariman, however, drew the attention of the court to a letter dated January 22, 1999, written on behalf other defendants to SEBI requesting it to defer the determination in view of the fact that the High Court was seized of the matter. He therefore, insisted that the defendants must agree to an issue being framed on the question of jurisdiction and the same be tried as preliminary issue or , alternatively, the defendants must agree not to press the issue in the manner in which it is worded in para 1(g) of the affidavit in reply of defendant no.11, which is as follows :

"This honourable court does not have jurisdiction to try, entertain and dispose of the suit."

Inview of the objection of Mr. Nariman, the defendants filed a joint affidavit of defendants Nos.1 and 11, affirmed on March 16, 1999, stating the for the reasons

contained therein, the submission was not being pressed. Referring to clause (g) of para.1 of the affidavit dated December, 21, 1998, inn reply to Notice of Motion no. 3120 of 1997 and para.1A of the reply dated December 21, 1998, in Notice of Motion no. 3932 of 1998 it was clarified that if the company had filed the present suit, the defendants could and would have contended that the jurisdiction of this court is ousted in view of section 111A (2) and (3) of the companies Act. since the plaintiffs as shareholders had filed the suit alleging violation of civil rights, such a suit can be filed before a civil court which has territorial and pecuniary jurisdiction. The defendants, therefore urged that an interlocutory stage this honourable court should not exercise its discretion to grant interim relief to the plaintiffs, since there is another forum which could be moved by the company for rectification of the register. Moreover, Mr. Reddy, (plaintiff) is only a name lender for the company and since no civil rights of Mr. Reddy are infringed, no relief should be granted to him. These are some of the factors amongst others which the court should consider while exercising its jurisdiction ion refusing the interim relief. At the trial of the suit, however the defendants would urge that the defendants do not have any right to oppose registration or to have the register rectified; and hence, the suit should be dismissed.

. In the light of the above submissions, ground (g) of para 1 and para 1A of the two aforementioned affidavits both dated December, 21, 1998 were not pressed.

21. The aforesaid paragraphs in both the judgments makes it clear that though the said issue of jurisdiction has been raised keeping in mind the provisions of section 15Y and 20A of the SEBI Act but the said issue of jurisdiction was expressly given up by the defendants. Not only that the issue of jurisdiction was never tried as a jurisdictional issue under section 9A inview of the express affidavit filed by the defendant but the said issue of jurisdiction was infact expressely given up. Learned counsel for the defendant has contended that on the other hand in the present case they are pressing for the issue of jurisdiction in view of the bar contained under section 15Y and 20A of SEBI and this court itself has framed the issue of jurisdiction under Section 9A of CPC. It has been thus contended that in the light of the aforesaid position the authorities cited by the learned counsel for the plaintiff both of the learned single in the case of M. Sreenivasulu Reddy (supra) and the judgment of the Division Bench in the case of Shirish Finance and

Investment P.LTd (supra) are not the authority at all for the proposition that this court has no jurisdiction in view of the express bar contained under section 15Y read with Section 20A of the SEBI Act. Learned counsel for the defendants have contended that the issue of jurisdiction which was considered by the division Bench and the learned Single Judge of the aforesaid case did not pertain at all to the jurisdiction of this court by virtue of the express bar contained under Section 15Y and 20A of the SEBI but what was urged before the court that even if the issue of jurisdiction was given up by virtue of the express provisions of Section 15Y and 20A still they are entitled to urge that court ought not to exercise its jurisdiction because if there is an appropriate expert body established by a special body like SEBI then even if there is a jurisdiction then also it is not prudent for the Court to exercise the same and the court must leave the matter to be determined by the board. It has been contended that what was argued by the Division Bench was whether it is proper to exercise the jurisdiction and not the lack of jurisdiction

whereas in the present case what is sought to be urged before this court is total lack of jurisdiction by express bar contained under Section 15Y and 20A. It has been further contended by the learned counsel for the defendant that infact the provisions of the said section are noticed by the learned single judge and the division bench but both the learned single judge and the Division Bench refrained itself from considering the said provisions because the said issues was expressly given by the defendant in that case and thus the said judgements cannot be a authority for the proposition as to the jurisdiction of this court in the light of the express bar contained under Section 15Y and 20A of the SEBI Act. It has been further contended that even in the light of the judgment therein discussion and/or analysis of the aforesaid provisions of law and the arguments and contentions advanced and decided by the court only pertains to the appropriate exercise of jurisdiction and does not pertain to lack of jurisdiction. It has been contended by the learned counsel for the dependants that undoubtedly the

court has considered the jurisdictional aspect vice-a-versa the provisions of Section 111A but the court has not considered the issue of jurisdiction vice-a-versa the provisions of Section 15Y and 20A of the SEBI Act. It has been thus contended that the issue or jurisdiction is not determined by either of the judgments of this court and issue is at large which is required to be determined by this court on the facts of the present case and in the light of the authorities cited by the parties.

22. Learned counsel for the plaintiff has on the other hand contended that though it is true that the issue of jurisdiction was given up by the defendants in both the aforesaid judgments i.e. the division bench and the learned single judge but even after giving up the said contention the defendants did argue the issue of jurisdiction at length before the single judge and the division bench and thus the single judge and the division bench both were required to consider the aforesaid issue of jurisdiction and the court has given a

appropriate finding in that behalf and thus the same are binding on me. It has been thus contended by the learned counsel for the plaintiff that though it is true that there is no discussion in the entire judgment of both the learned single judge and the division bench as to the jurisdiction of this court in the light of the provisions of Section 15Y and 20A of the SEBI Act but he has urged that it is not necessary that the provisions of the SEBI and/or the wordings of the section must be considered by the court. He has contended that this court has held that identical kind of suit was within the jurisdiction of this court and therein the court has ultimately passed interim reliefs in that behalf and therefore this court must also accept the said proposition as a binding proposition of law and ought to hold that this court has jurisdiction. On the other hand the learned counsel for defendant no.7 has contended that the said judgment is not an authority on the proposition relied upon and canvassed before this court and therefore this court cannot rely upon the said authority blindly and thus hold that this

court has jurisdiction. Learned counsel Mr. Tulzapurkar appearing for defendant no.4 has further contended that the view expressed by the single judge and the division bench is only a prima-facie view and this court while determining the preliminary issue under section 9A is determining the issue finally and therefore the prima-facie view cannot bind this court while deciding the issue at the final hearing stage. It has been thus contended by the learned counsel Mr. Tulzapurkar that the view expressed by the single judge and the division bench in both the aforesaid judgment were at the interim stage and the view of the interim stage does not bind the learned single judge at the final hearing of the suit. Mr. Dvitre appearing for defendant no.7 has supported the argument of the learned counsel for defendant no.4 and infact relied upon the judgment of the division bench of **Himchal Pradesh in the case of Kanshi Ram vs. Bansi Lal reported in AIR 1977 Himachal Pradesh Page 61 and** particularly para 6 of the said judgment which reads as under :

"6. Now therefore this court was called upon to decide the question whether the order of the controller was a nullity and a prima facie cases existed in favour of the tenant. The question whether the order of the controller was a nullity had received the detailed consideration of both of the learned Subordinate Judge and of the learned District Judge, and this court was called upon to determine that point. The Court found it necessary to consider the point in depth. Nonetheless, having regard to the nature of the jurisdiction exercised and the stage at which the suit then stood, we are of opinion that the finding of this curt that the order of the controller was a nullity must be regarded as a finding in regard to a prima facie case only. It was not intended, and cannot be construed as a finding disposing of the suit itself. In every application for an interim injunction in a pending suit, it is necessary for the court to enter, to some degree into the merits of the case in order to determine whether a prima facie case exists. To what degree the court will enter will vary with the facts of each case. When the court declares that a prima-facie case, it intends to say that the case of the plaintiff is not without merit. It is an opinion rendered on the state of the evidence then existing on the record, and it is open to the trial court to take a different view when all the 3evidence has been let in and the suit itself has to be decided. In some cases, a pure question of law alone may arise in the suit. In such a case when the court expresses an opinion on the question in order to determine in an injunction application whether a prima-facie case exists, an impression can conceivably be gathered that the suit itself has been disposed of. But when the matter is considered in deeper perspective, it will be evident that the impression is a

> false one. The finding is limited to the context in which it has been given. It is a finding on an application for interim relief only. Any opinion expressed by the court, whether it be of the trial court or an appellate court or revisional court, cannot in law preclude the trial court from considering the issue afresh when deciding the suit, and for that purpose it must have regard to all the material then before it. In deciding that issue, it will properly have no regard to the finding rendered on the point while disposed of the application for interim injunction. No matter how superior the court rendering that finding-and we could include this court-the trial court is bound in the proper discharge of its duties to ignore the finding when it proceeds to dispose of the suit and to apply its mind independently to the decision of the issue. the trial court will bear in mind that the opinion expressed on the merits of the suit when deciding an application for interim injunction does not operate as res judicata. Even in a case where the suit calls for the decision of court would be entitled to, and indeed is on the issue of law and dispose of the suit accordingly. Conceivably, the supreme court may meanwhile have expressed a contrary opinion on the point of law, or the statutory law itself may have altered retrospectively.. Considerations such as these and many others can come into existence after the application for interim injunction has been disposed of."

23. He has contended that Justice R.S. Pathak (as he then was) has held that the findings given

even on a point of law at the interim stage are only prima-facie and cannot bind the learned single judge while determining the issue of law finally. He has contend that when the court determines the issue of jurisdiction under Section 9A it decides the preliminary issue finally and thus while doing so the prima-facie observation at the interim stage cannot be an obstacle. Learned counsel for the plaintiff has drawn my attention to the judgment of the learned single judge of this court in the case of R.T.M.C vs. Bri...reported in 1967 (Vol 37 C.C. 758) particualry page 771 and 772 and has contended that the view taken by this court that the issue of law even if determined at the interim stage is binding on the final hearing of the matter and cannot be disregarded merely because the matter was heard at the interim stage and now it is heard at the final hearing stage. It has been thus contended that in the light of the law laid down by the learned single judge and the Division Bench in the aforesaid two judgement in the case of M. Sreenivasulu Reddy (supra) the law is well settled that this court has jurisdiction to entertain and

try the present suit irrespective of the provisions of Section 15Y and 20A of the SEBI Act and therefore this court must hold that this court has jurisdiction to entertain the present suit.

24. I have considered the arguments of both the learned counsel appearing for various parties. Before I deal with the same I am of the opinion that it is necessary to remind myself of the well known golden rule that a judgment is an authority on proposition of law which it decides. This golden rule has been laid down ages back in the famous case of Quinn vs. Leathem which has been approved and accepted by this court in various judgments including the famous case of Privy Purse of the 11 judges bench of the apex court in which it has been inter-alia held as under :

. 229. In The State of Orissa v. Sudhansu Sekhar Misra and Others, dealing with the question as to the importance to be attached to the observations found in the judgments of this Court, this is what this Court observed:

> "A decision is only an authority for what it actually decides. What is of the

> essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, L.C. said in Quinn v. Leathem, (1901) AC 495:
>
> "Now before discussing the case of Allen v. Flood, (1898) ACI and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."
>
> . It is not a profitable task to extract a sentence here and there from a judgment and to build upon it."

25. This golden rule of Quinn v. Leathem (1901) AC 495 has been consistently followed by the Supreme court even in the latest cases of **Bharat**

Forge Co. Ltd. v. Uttam Manohar Nakate (2005) 2 SCC 489, Kalyan Chandra Sarkar v. Rajesh Ranjan (2005) 2 SCC 42, Cement Corporation of India Ltd. v. Purya (2004) SCC 270 and the Judgment of Amrendra Pratap Singh Vs. Tej Bahadur Prajapati and Others in (2004) 10 Supreme Court Cases 65. The apex court in the aforesaid judgements has held as under :

> " A judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention to the judges, and inferring from it a proposition of law which the judges have not specifically laid down in the pronouncement."

26. In the light of the said golden rule the question arising before me is whether the judgment of the learned single judge in the case of M. Sreenivasulu Reddy (supra) and the judgment of the division bench in the case of Shirish Finance and Investments P.Ltd (supra) decides the proposition of law as canvassed by the learned counsel for the plaintiff that inrespect of an express bar

contained under Section 15Y and 20A of the SEBI Act this court has jurisdiction to entertain and try the suit of the nature which has been placed before me. In my opinion the answer is an emphatic no. This is not only because the issue is not considered and/or decided by either of the judgments of the learned single judge and the Division Bench but infact as quoted above the issue was specifically given up and the court Has so recorded that the defendants in that case are not pressing the issue of jurisdiction under section 9A of the CPC pertaining to the bar contained under Sections 15Y and 20A of the SEBI Act. In the light of the express recording of a concession by the division bench and the learned single judge that the defendants are not pressing the issue of jurisdiction it is not possible for me to hold that the aforesaid two judgments of the learned Single Judge and the division bench is a by way of precedent a binding authority on an issue which was given up and thus not considered by the learned single judge and the division bench of this court. However the learned counsel for the plaintiff has

strenuously contended that though the said issue has been given up, still the learned judge and the division bench in appeal have considered the very same issue of jurisdiction of this court vice-a-versa Section 15Y and 20A of the SEBI Act and held that it does not contain a bar to entertain the nature of the suit which has been raised in the present case. I have considered the aforesaid argument. Learned counsel has in support of the argument has taken me through paras after paras of both the judgment of the learned single judge and the division bench and I have given an anxious consideration to the argument advanced by the learned counsel. However I am unable to accept the said contention. It is because even after reading paras after paras of the judgment I am unable to find any reasoning, any consideration and/or any contention which has been dealt with and/or findings given pertaining to the express bar contained under section 15Y and 20A in either of the said judgments. In my opinion the judgment has proceeded on a concession that this court has jurisdiction and the provisions of S.15Y and 20A

are not pressed. However both the judgments of the learned single judge and the division bench have undoubtedly considered the jurisdiction aspect from two different angles. First from the angle that whether this court's jurisdiction is barred inview of the provisions of section 111A of the Companies Act-I of 1956 because the said provision is a complete code and scheme by itself for rectification of register of members and thus by necessary implication this court's jurisdiction to entertain the application for rectification of share register is barred. The second angle on which the single judge and the division bench both have decided the matter is that whether even if any court has jurisdiction would it be appropriate to grant necessary interim reliefs and exercise necessary jurisdiction because if an expert body like SEBI is conferred with the power to take cognisance of the breach of the Takeovers Regulations then in that event whether this court ought to exercise the jurisdiction even if it does possess the same. The court has considered both these angles and given a finding that in a given

case the court would be entitled to exercise jurisdiction and give relief to the person concerned who is complaining breach of the Takeover Regulations. It is also held by the learned single judge and the Division Bench that the right of rectification of the shares is a common law right and such right is not affected by the provisions of Section 111A which inter-alia confers on the company law Board the power to rectify the register. It is because the jurisdiction of the company law board is a summary jurisdiction whereas in a case of complicated questions of facts or a serious question of fraud arising the court is empowered to exercise jurisdiction in a civil court in exercise of power conferred under Section 9 of the CPC. It has been held that the power of the civil court under section 9 is not impliedly barred by virtue of the provisions of Section 111A. In the light of the aforesaid I am of the view that the judgment of the learned single judge and the division bench does not conclude an issue as to whether this court has jurisdiction or not in the light of the provisions of Section 15Y and 20A.

27. In the light of the aforesaid view I have taken it is now necessary for me to consider as to whether the provisions of Section 15Y and 20A on the facts of the case bars the jurisdiction of this court to entertain the present suit which has been filed before me. Before I do so it is necessary to consider the settled position of law as to the interpretation of section 9 of the CPC. The law as to the jurisdiction of this court and its exclusion thereof has been the subject matter of diverse judgements of the apex court commencing from the judgment of the 7 judges bench in the case of **M/s. Kamala Mills Ltd vs. State of Bombay reported in AIR 1965 S.C. page 1942 (V 52 C 333)** the apex court has held as under :

> ." The normal rule prescribed by S.9 of the Code of Civil Procedure is that the courts shall (subject to the provisions contained in the Code) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizances is either expressly or impliedly barred. A claim by the dealers for the refund of sales tax which is alleged to have been paid by them through mistake is a claim of a civil

nature. It should normally be triable by the ordinary courts of competent jurisdiction as provided by S.9. But the jurisdiction of the civil courts to try suits of a civil nature can be excluded either expressly or impliedly. This is laid down in this section itself. The question about the exclusion of the jurisidiction of civil courts either expressly or by necessary implication must be considered, in every case, in the light of the words used in the statutory provision on which the plea is rested the scheme of the relevant provisions, their object and their purpose.

Whenever a plea is raised before a civil court that its jurisdiction is excluded either expressly or by necessary implication to entertain claims of a civil nature, the court naturally afforded by an alternative provision prescribed by a special statute is sufficient or adequate. Where the exclusion of the civil courts jurisdiction is expressly provided for the consideration as to the scheme of the statute in question and the adequacy or the sufficiency of remedies provided for by it may be relevant, it cannot, however be decisive. But when exclusion is pleaded as a matter of necessary implication, such considerations would be very important, and in conceivable circumstances, might even become decisive. If a statute creates a special right or a liability and provides for the determination of the right and liability to be dealt with the tribunals specially constituted in that behalf and it further lays

> down that all questions about the said right and liability shall be determined by the tribunals so constituted, it is pertinent to enquire whether remedies normally associated with actions in civil courts are prescribed. "

28. The judgment of the 7 judges bench was followed by another judgment of the constitutional bench in the case of **Dhulabhai vs. State of Madhya Pradesh and anr. reported in AIR 1969 S.C. 78.** there the court laid down the principles which are to be considered for exclusion of jurisdiction of civil court and the seven principles which have been laid down read as under :

> (1) Where the statute gives a finality to the orders of the special tribunals the civil courts jurisdiction must be held to be excluded if there is adeuate remedy to do what the civl court would normally do in a suit. Such provision, however, does not exclude thsoe cases where the provisions of the particular Act have not been complied with or the statututory tribunal has not acted in the conformity with the fundamental principles of judicial procedure.
>
> (2) Where there is an express bar o the jurisdiciton of the court, an examination of the scheme of the particualr Ac to find the adquancy or the sufficiency of the

remedies provided may be relevant but is not decisive to sustain teh jurisdiction of the civl court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act tio find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associatedd with actions in civl courts are prescribed by the said statute or not.

(3) Challenge to the provisins of the particular Act as ultra vires cannnot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutinality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the partcular Act contains no machinery fior refun o tax colel cted in excess of constitutional lilmits or illegally collected, a suit lies.

(6) Questions of the correctness of the assessment apart from it constitutionality are for the decision of the authorities and

> a civil suit does not lie if the orders of the authorities are delcared to be final or there is an express prohibition in the particualr Act. In eitehr case the scheme of the particular Act must be examined because it is a relevant enquiry.
>
> (7) An exclusion of jurisdiciton of the Civil court is not readily to be inferred unless the conditions above set down apply."

29. The aforesaid view of the 7 judge bench and of the constitution bench has been subsequently and consistently followed by the supreme in the case of **Vatticherukuru Village Panchayat vs. Nori V. Deekshithulu reported in 1991 Supp (2) S.C.C. 228**

> ". Section 9 of the Civil Procedure Code, 1908 provides that whenever a question arises before the civil court whether its jurisdiction is excluded expressly or by necessary inplicaiton, the court naturaally feels inclined to consider whether remedy afforded by an alternative provision prescibed by special statute is sufficient or adequate. In cases where exclusion of the civil court's jurisdiction is expressly provided for, the consideration as to the scheme of the statute in question and the adequacy or sufficiency of the remedy provided for by it may be relevant, but cannot decisive. Where exclusiion is pleaded as a matter of necessary implication such consideration

> would be very important and in conceivable circumstances might become even decisive."

30. It has been further followed in the case of **S. Vanathan Muthuraja vs. Ramalingam alias Krishnamurthy Gurukkul and Ors reported in (1997) 6 SCC 143** and has been further followed in the case of **Vankamamidi Venkata Subha Rao vs. Chatlapalli Seetharamaratna Ranganayakamma reported in AIR 1997 SC 3082** wherein it has been held as under :

> "15. Where there is an express bar of jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of he remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil Court. Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary that the statute creates a special right or liability and provides procedure for the determination of the right or liability and further lays does that all questions about the said right or liability shall be determined by the Tribunal so constituted and whether remedies is normally associated with the action in civil courts or prescribed by the statutes or not. Therefore, each case

> requires examination whether the statute provides right and remedies and whether the scheme of the Act is that the procedure provided will be conclusive and thereby excludes the jurisdiction of the civil court in respect thereof. "

31. Keeping in mind the aforesaid principles of Section 9 of the CPC as has been held by the apex court in the 7 judges bench and consistently followed thereafter it is for me to determine whether the provisions of Section 15Y and 20A expressly bars the jurisdiction of this court. It has been already held in each of the aforesaid judgments that where there is an express bar the question whether the Act also provides the right as well as remedy and/or the scheme of the Act is a complete code by itself is not very determinative factor though may be relevant. Learned counsel for the plaintiff has contended that the provisions of Section 15Y and 20A of the SEBI Act cannot bar the jurisdiction of this court for a shareholder to apply for rectification of the shares. He has contended that the right of the shareholder to

maintain purity of the register is a common law right and thus he has also common law right of rectification of the shares register if the same is illegal and unlawfully altered. It has been his contention that such a kind of a suit is not barred by the provisions of Section 15Y and 20A. It is his contention that the provisions of Section 15Y and 20A only bars those kind of suits which are covered by the adjudication proceedings and where the jurisdiction is conferred on the adjudicating officer for the purpose of levelling penalty and imposing fine. It has been contended that the legislature never intended to bar the suit of a shareholder for rectification of the shares under Section 15Y and 20A. It has been contended that it is a settled law that once there was a common law right available as in the present case under the SEBI Act, 1992 then in that event unless the subsequent statute expressly takes away the common law rights which was pre-existing it cannot be treated that, that rights has been taken away by implication by providing the provisions of Section 15Y and 20A. It has been further contended that

while interpreting Section 15Y and 20A this court also must take into consideration the provisions of Section 21 and 32 of the SEBI Act. It was contended that by virtue of Section 21 it is expressly provided that infact the suit or other proceedings which can be brought against any person that would not be meant to have taken away by virtue of the provisions of this Act. By relying upon section 32 it has been contended that the provisions of SEBI Act is in addition to and not in derogation of the provisions of any other law and therefore the common law right of rectification is not taken away and the remedy under the provisions of the SEBI Act particularly under 44 of the Takeover Regulations is in addition to the pre-existing common law right and not in derogation thereof. It has been contended that looking to the scheme of the Act itself it is clear that the bar contained under Section 15Y and 20A cannot be extended to the nature of the suit and must be restricted to those matters where the proceedings are initiated for the purpose of imposition of penalty. Learned counsel for the plaintiff has

also drawn my attention to the provisions of Section 15Y particularly the words ‘inrespect of any matter which the adjudicating officer appointed under this Act is empowered by or under this Act to determine.....’ Learned counsel has also drawn my attention to the provisions of Section 15I which inter-alia provides for power on an adjudicating Officer to adjudicate the matter. He has drawn my attention to the said section and has contended that the only power which is conferred on the Adjudicating Officer is to levy fine as contemplated under Section 15HA which may extend upto Rs.25 crores or around three times the amount of profit whichever was higher. It was thus contended that the adjudication Officer has no power to order rectification of the share register and thus the provisions of Section 15Y would not apply to the nature of the case as presented before this court by the plaintiff. Learned counsel for the plaintiff has also drawn my attention to the provisions of SEBI (Procedure of holding inquiry) Rule 1995 and has contended that the power of adjudication conferred on SEBI is not a matter of

right for the plaintiff. He contended that there is no provision in law under which the plaintiff can file any application or a suit before the SEBI and can seek relief of rectification of the register and/or declaration that the shares allotted in favour of the defendant no.1 and subsequent transfer and sale thereof and/or further allotment are bad in law and therefore the share register must be rectified. It has been contended that the remedy provided by the statute is more of a generic nature then vindication of individual right of the shareholder for rectification of the said register. It has been contended therefore that the provisions of Section 15Y and 20A of the SEBI must be so read down on the principles of strict construction and that this court ought not to hold that by virtue of the aforesaid provisions this court has no jurisdiction to entertain and try the present suit.

32. Mr. Seervai, learned counsel for the plaintiff has thereafter contended that the provisions of the SEBI Act particularly in the

light of the provisions of 12(A)(F) of the said Act do not confer any right on a shareholder to seek the rectification of share register challenging the acquisition of the shares and thus though the provisions of the SEBI Act confer a power on the board to cancel allotment or freeze transfer of shares which are in contravention of Takeover Regulations they do not simultaneously confer any right on the shareholder to challenge the allotment and/or transfer of the shares in breach of the Takeover Regulations. He contends that the right of the shareholder is a common law right to maintain purity of the share register and thus consequently he can apply for the enforcement of a right by way of rectification of share register by a civil suit. He further contends that the Takeover Regulations indirectly confers a right on the shareholder to see that the transfer of the shares is not in breach of any law and thus the Take Over Regulation under the said right can be exercised by filing of the suit for rectification of the register. He has also drawn my attention to the Takeover Regulation of the SEBI Act and the

inquiry provisions and contended that the provisions of the said Act confers power on the board to see that the Takeover Regulations are not violated but it does not confer any simultaneous right on the plaintiff to apply for rectification of the shares. He has contended that the right to apply for rectification of the shares is a common law right and therefore can be only invoked and exercised by filing the civil suit. He has insupport of the aforesaid argument drawn my attention to the judgment of M. Sreenivasulu Reddy (supra) and also cited a judgmnet in the case of **The Wolverhampton New Waterworks Company v. Hawkesford reported in Re Allen reported in 6 C.B. (N.S.) 335** and particularly the following para at page 495

> ". There are three classes of cases in which a liability may be established founded upon a statute. One is, where thee was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law : there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, and the party suing has his election to pursue either that or the

> statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy : there, the party can only proceed but action at common law. But there is a third class, viz. where a liability not existing at common law is created by a statute which at the same times gives a special and particular remedy for enforcing it. The present case falls within this latter class, if any liability at all exists. The remedy provided by the statue must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. "

33. He has also cited before me the judgment of the Supreme Court in the case of **Shiv Kumar Chadha vs. Municipal Corporation of Delhi and Ors reported in (1993) 3 S.C.C. 161** and particularly the following para's of the said judgment :

> "6. The Delhi Municipal Corporation Act, 1957 (hereinafter referred to as "the Corporation Act") has made provisions for the constitution of the Corporation and has prescribed the procedure for election of the councillor, levy of taxes, sanitation and public health. Chapter XVI contains provisions regarding erection of buildings within the Corporation area. Section 331 defines the expression 'to erect a building'. Section 332 says that 'no person shall erect or commence to erect any building or execute any of the works specified in Section 334 except with the previous sanction of the Commissioner." The

relevant part of Section 343 is as follows :-

> "343. Order of demolition and stoppage of buildings and works in certain cases and appeal - (1)
>
> (2) Any person aggrieved by an order of the Commissioner made under sub-section (1) may prefer an appeal against the order to the appellate tribunal within the period specified in the order for the demolition of the erection or work to which it relates.
>
> (3) Where an appeal is preferred under sub-section (2) against an order of demolition , the appellate tribunal may, subject to the provisions of sub-section (3) of Section 347-C, stay the enforcement of that order on such terms, if any, and for such period, as it may think fit :
>
> (4) No court shall entertain any suit, application or order proceeding for injunction or other relief against the Commissioner to restrain him from taking any action or making any order in pursuance of the provisions of this section.
>
> (5) Subject to an order made by the Administrator on appeal under Section 347-D, every order made by the appellate tribunal on appeal under this section, and subject to the orders of the administrator and the appellate tribunal on appeal, the order of demolition made by the Commissioner shall be final and conclusive."

7. Section 344 vests power in the Commissioner to stop he construction of the building where the erection of such building or execution of any work has been commenced or is being carried on either without sanction or contrary to sanction so granted or in contravention of any condition subject to which sanction has been accorded. Under Section 345-A the Commissioner at any time, before or after making an order of demolition under Section 343 or of the stoppage of the erection of any building or execution of any work under Section 343, can make an order directing the sealing of such erection or work or of the premises in which such erection or work is being carried our has been completed. A further appeal has been provided under Section 347-D to the administrator against the order of the appellate tribunal. Section 347-E says :

> "347-E. Bar of jurisdiction of courts.- (1) After the commencement of Section 7 of the Delhi Municipal Corporation (Amendment) Act, 1984, no court shall entertain any suit, application or other proceedings in respect of any order or notice appealable under Section 343 or Section 347-B and no such order or notice shall be called in question otherwise than by preferring an appeal under these sections.
>
> (2) Nothwithstanding anything contained in sub-section (1), every suit, application or other proceeding pending in any court immediately before the commencement of sub-section (7) of the Delhi Municipal Corporation (Amendment) Act, 1984, in respect of any order or notice appealable under Section 343 or Section 347-B,

shall continue to be dealt with and disposed of by that court as if the said section had not been brought into force."

10. Section 9 of the Code of Civil Procedure (hereinafter referred to as 'the Code") says that courts shall have jurisdiction to try all suits of civil nature "excepts suits of which their cognizance is either expressly or impliedly barred". According to the Corporation once the jurisdiction of the Court to try a suit in which the validity of any order passed under the provisions of the Corporation Act or the notice issued thereunder has been specifically barred and an internal remedy has been provided for redressal of the grievances of the persons concerned, there is no scope for court to entertain a suit.

11. In the olden days the source of most of the rights and liabilities could be traced to the common law. Then statutory enactments were few. Even such enactments only created rights or liabilities but seldom provided forums for remedies. The result was that any person having a grievance that he had been wronged or his right has been affected, could approach the ordinary civil court on the principle of law that where there is a right there is a remedy - *ubi jus ibi remedium.* As no internal remedy has been provided in the different statutes creating rights or liabilities, the ordinary civil courts had to examine the grievances in the light of different statutes. With the concept of the welfare state, it was realised that enactments creating liabilities in respect of payment of taxes, obligations after vesting of estates and conferring rights on a class of citizens, should be complete

> codes by themselves. With that object in view, forums where created under the Acts themselves where grievances could be entertained on behalf of the persons aggrieved. Provisions were also made for appeals and revision to higher authorities.
>
> 12. Then a question arose as to where a particular Act had created a right or liability and had also provided a forum for enforcement of such right or for protection from enforcement of a liability without any authority in law, whether a citizen could approach a court. It may pointed out that many statues have created certain rights or liabilities and have also provided the remedial measures in respect thereof. But such statutes have not touched the common law rights of the citizen. But there are some states, which in public interest affect even the common law rights or liabilities of the citizen, which were in the nature of existing rights. The distinction between the two types of rights or liabilities is subtle in nature but at the same time very vital."

as well as the another judgment of the apex court in the case **State of Tamil Nadu vs. State of Karnataka and Ors reported in 1991 (1) S.C.C. 240.** and has cited the following para's of the said judgment :

"9. Dr.Y.S. Chitale, appearing on behalf of the respondent, State of Karnataka raised an objection that this court had no jurisdiction to entertain any appeal against the impugned order of the Tribunal. It was submitted that Article 262 of the Constitution clearly provided that in respect of adjudication of disputes relating to waters of interstaste river has to be decided by law made by Parliament in this regard. Clause (2) of Article 262 further provided that Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1), notwithstanding anything contained in this Constitution. It was submitted that the Interstate Water Disputes Act, 1956 was enacted by the Parliament, to provide for adjudication of disputes relating to waters of interstate rivers, and river valleys. Section 11 of this Act provided as under :

> "11. Bar of jurisdiction of Supreme Court and other courts- Notwithstanding anything contained in any other law, neither the Supreme Court nor any other court shall have or exercise jurisdiction in respect of any water dispute which may be referred to a Tribunal under this Act."
>
> It was thus contended that the above Section 11 clearly took away not only jurisdiction of any other court but also of the Supreme Court in express terms."

14. In the dispute relating to river Cauvery itself an application under Article 32 of the Constitution was filed by Tamil Nadu Cauvery Neerppasana Vilaiporulgal

> Vivasayigal Nala Urimal Padhugappu Sangam which was said to be a society registered under the Union of India to refer the dispute under Section 4 of the Act and Nala Urimal Padhugappu Sangam v. Union of India allowed the petition and directed the Central Government to fulfil its statutory obligation and notify in the official gazette the constitution of an appropriate tribunal for the adjudication of the water dispute."
>
> 15. Thus, we hold that this court is the ultimate interpreter of the provisions of the Interstate Water Disputes Act, 1956 and has an authority to decide the limits, powers and the jurisdiction of the Tribunal constituted under the Act. This Court has not only the power but obligation to decide as to whether the Tribunal has any jurisdiction or not under the Act, to entertain any interim application till it finally decides the dispute referred to it. There is thus no force in the above argument raised by Dr. Y.S. Chitale. "

34. It has been contended by the learned counsel for the plaintiff that the provisions of Section 15Y and 20A of the SEBI do not apply and the jurisdiction of the civil court can never be barred when it comes to the determination of the question as to the length and breadth of the

jurisdiction of the tribunal and/or determination of the finer question of law and/or interpretation of the statue because it is only the civil court who is the ultimate authority and has power to determine the scope and sphere of jurisdiction and also determine the legal interpretation of the various questions of law which may arise for the purpose of consideration. It has been contended that in view of the fact that in the present suit the plaintiffs have raised the issue as to the correctness of interpretations of the provisions of Regulation 3(1)(c) of the TakeOver Regulation, therefore this court must hold that this court has jurisdiction to entertain the present suit and determine correct interpretation of the said Regulation 3(1)(c). In support of the aforesaid argument he has also relied upon the judgment of the learned single judge and the division bench in the case of M. Sreenivasulu Reddy (supra).

35. On the other hand the learned counsel for the defendants has vehemently contended that each

of the arguments advanced by the learned counsel for the plaintiff has no basis whatsoever in the facts of the present case. It has been contended that as it has been well settled that wherever there is an express bar as to the jurisdiction of the civil court under the statute then in that event it is not necessary to determine whether the Act provides for a remedy or the scheme of the Act is a complete code by itself. It has been contended that as held by the Supreme Court in large number of authorities these factors are not the determinative test in the light of the express bar contained under the statute and are merely relevant factors. It has been contended that this court cannot hold that this court has jurisdiction to entertain and try the suit inspite of the express bar contained under the statute merely because the Act does not provide for a remedy of rectification. However alternatively the learned counsel for the defendants has contended that on the facts of the present case the Act does provide for a remedy and my attention is drawn to the provisions of Regulation 44(d) and (c). Mr.

Dwarkadas learned counsel appearing for defendant no.3 has contended that Regulations 44(c) and (d) are a complete code providing all the reliefs which are sought for by the plaintiff in the present suit. He has contended that the word ‘cancellation’ used in Regulation 44(c) and (d) are much higher than ‘rectification’ and inrsepect thereof he has relied upon the definition of the word ‘cancellation’ and ‘rectification’ as given by the Advanced Law Lexicon ‘Aiyar’s. The relevant portion of the definition read as under :

> **Cancellation**- To destroy the force effectiveness, or validity of. To annul, abrogate, or terminate. Defacement or mutilation of instrument. Words of revocation written across instrument.
>
> A means whereby a holder discharges a parties liability on an instrument by physically demonstrating on the face of the instrument the intention to discharge, as by writing ‘CANCELLED’ across the instsrument’s face, striking out the aptly signature, or destroying or mutilating the signature on the instrument. As applied to documents of title, the term refers to the act of the bailee voiding a negotiable document upon its surrender by the holder in taking possession of the goods. "

> **Rectification-**implies the correctness of an error or removal of defects or imperfections. It implies prior existence of error, mistake or defect, which after rectification is made right, and corrected by removal of the flaws. Rectification means making or setting right or correcting what is wrong and not declaring that what is done has been rightly done."

36. Learned counsel for the defendants have contended that the right as well as the remedy are both provided by the SEBI Act itself. It has been contended that the nature of the right conferred under the Takeover Regulations is in the interest of the investor as a class and not in favour of the individual shareholder. It has been contended that thus the remedy provided for by the statute is also of a generic nature which inter-alia include in appropriate cases even for rectification of the said register. Thus there is a complete right and complete remedy under the said Act. It has been brought to my attention that while the learned single judge and the division bench were considering the provisions of the SEBI and Takeover Regulations in the aforesaid judgment of M.

Sreenivasulu Reddy (supra) one of the fact which weighed with the court was that there was no provision for the rectification of the share register in the SEBI Act or Takeover Regulations at that point of time. It has been contended by the learned counsel for the defendant that subsequent to the judgment of M. Sreenivasulu Reddy (supra) there has been an amendment in the provisions of the Takeover Regulations and by amending the Act namely SEBI (Substantial Acquistion of Shares and Takeovers) and Second Amendment Regulation 2002 which has been brought in force with effect from 9.9.2002 the provisions of Regulation 44 has been amended and expressely the provisions of sub-clause (d) and (e) thereof has been inserted so as to provide for a remedy of rectification of the register by providing for cancellation of the said allotment and/or freezing the transfer in contravention of the said Takeover Regulation. Thus the basis on which the learned Single judge and the division bench held that the remedy of rectification of the shares is not provided for under the Takeover Regulation the said basis has

been taken away by legislative amendment of the said provisions and providing for the remedy thereof. It has been thus contended that the argument of the learned counsel that the common law right can be exercised only by the civil court because the remedy is not provided under the SEBI Act does not any longer survive and therefore the same should be rejected. It has been further contended that the argument of the learned counsel for the plaintiffs that the various provisions of the law are required to be interpreted and therefore this court has jurisdiction as this court is a final authority as to the interpretation of any of the legislation is also without any merits. It is because the various provisions of law are already interpreted by the learned single judge and the division bench in the case of Shirish Finance and Investments P.ltd (supra) and every time the person cannot circumnent an express bar inrespect of exclusion of the jurisdiction of the court by contending that certain provisions are required to be interpreted. He has contended that the provisions which are sought to be interpreted in

the present case are identical to the provisions which are sought to be invoked before the court in the case of M. Sreenivasulu Reddy (supra) and thus the said provisions are also considered and already been interpreted and therefore the argument that this court has jurisdiction for the purpose of interpretation of Regulatuion 3(1)(c) does not survive and ought to be rejected. Learned Counsel Mr. Dwarkadas has further contended that the nature of right conferred under the SEBI Act and the nature of remedy provided must be viewed in the light of the nature of right and the scheme of the Act. He has relied upon the judgment of **Rajkot Municipal Corporation vs. Munjulben Jayantilal Nakum and Ors. reported in (1997) 9 SCC 552** and particuarly the following para :

> "20. If the statute creates right and remedy, damages are recoverable by establishing the breach of statute as the sold remedy availaible under the statute. But where a statute merely creates a duty without expressely providing any remedy for breach of it, appropriate remedy, prima-facie, is punishment for misdemeanour in respect of the

> injury to the public and the action for damages in respect of any special damage suffered by an individual. Where special remedy is expressely provided prima facie that was intended to be the only remedy and by implication it exludes the resort to common law. But this is also by no means conclusive. The consideration would be whether the statute intends to award damges for breach of statutory duty. Though general rule is that where a statute creates an obligation and enforce performance in a specified manner, performance cannot be enforced in any other manner. It depends teh scope of the Act which creates the obligation and on consideration of te underlying policy of the statute, effect on the individuals is to be carefully examined and analysed as to what the statute has expressely laid down or probably what the statute aims to achieve. The action for damages will not lie if the damages suffered by him is not of the type intended to be guarded against.

37. Thereafter earned counsel Mr. Dwarkadas has relied upon the judgment of **Scott vs. Frank F. Scott (London), Ltd and Ors repaorted in vol.3 All England Law Reoirts Annotated**. Mr. Dwarkadas thereafter relying upon the word ‘rectification’ and ‘cancellation’ has contended that the remedy

provided under Regulation 44(c) and (d) is nothing but identical to the rectification of the share register. He has contended that rectification has been interpreted in the case of Scott (supra) and the English Court has held that the word rectification means only to rectify and bring to the original form and nothing else. It has been further contended that when cancellation is provided for under Regulation 44(C) and (d) obviously the same takes into account also the argument of the learned counsel for the plaintiff because share register will be brought to the original form once the allotment is cancelled and or transfer is freezed and effect thereof is not permitted to be given.

38. Mr. Tulzapurkar learned counsel for defendant no.4 has thereafter brought to my attention the judgement of the division bench of this court in the case of **Nagin Mansukhlal Dagli vs. Haribhai Manibhai Patel reported in AIR 1980 Bom.123** and has contended that the form or words in which the relief is couched in is not important as

much as what is necessary to see is what substantive relief has been sought. He has relied upon para 10 of the judgment which reads as under :

> "10. Prayer (b) of the plaint, in the guise of a prayer for a mandatory injunction against the defendant to remove himself from the said flat, is in substance no other than a prayer for the recovery of possession of the said flat. Realizing full well that the proper relief to pray for would be a decree or order for possession but at the same time being desirous of bringing the suit in this court and simultaneously not wishing the suit to suffer from a technical defect, the draftsman of the plaint has in the said prayer sought to protect the plaintiff by using the phraseology "that the defendant be ordered and decreed by a mandatory order or injunction...." Thus, really what is prayed for is a decree for possession. "It is now well settled that when we have to determine the nature of the suit what we are to look at is the real substance of the suit and not legal ingenuity in drafting the plaint. The plaint read as a whole and the real substance of the suit leaves no doubt that this is a suit between persons who hold the character of a licensor and licensee, which relationship having come to an end according to the plaintiff, the plaintiff has become entitled both in law and under the agreement of licence to recover

possession of the property from the defendant, his licensee."

39. He has also brought to my attention the judgment of the apex court in the case of **B. Prabhakar Rap and Ors. vs. State of Andhra Pradesh and Ors. reported AIR 1986 S.C. 210.** Learned counsel has thereafter contended that in the present suit the relief which has been sought is in essence in terms of prayer clause (a) which is that allotment of the contravention of the Takeover Regulation is bad in law and that relief is covered by the provisions of Regulation 44(c). The other reliefs in the present suit are consequently to the declaration in prayer clause (a) of the said suit. He has brought to my attention the division bench order in the present proceedings arising out of an ad-interim order in which the ad-interim was refused. The division bench in Appeal (L) No. 973 of 2005 in an order dated 29/09/2005 has held as under :

> "The suit filed by the plaintiffs inter alia seeks various reliefs. The main relief is for a declaration that the preferential allotment of 8,10,77,500 CRCPS by Defendant no.7 to Defendant no.1 in October, 2000 and the subsequent conversion thereof to equivalent equity shares to Defendant no.1 is in violation of the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and as such is clearly illegal, without the authority of law, contrary to law ab-initio null and void and non-est. There are consequential reliefs includiong for relief against the transferees subsequent by Defendant no.1 to defendant nos.2, 3, 4, 5, and 6."

40. He has thus contended that once prayer clause (a) can be granted by the board then all other prayers are covered and automatically the plaintiff would get complete relief in the SEBI proceedings. Learned counsel has brought to my attention that though there may not be express right for the individual to go to the board but under Regulation 38, 39 of the Takeover Regulations any person can lodge a complaint and under Regulation 39 the board has been empowered to give

notice and appeal lies therefrom to the Central Government under Regulation 46 of the Takeover Regulation. It has been thus contended by the learned counsel for defendant no.4 that the complete remedy is provided under the Takeover Regulation and therefore this court ought not to entertain the present suit.

41. I have considered the rival submissions of the parties and I am of the opinion that the contention of the learned counsel for the plaintiff that irrespective of the fact that there is an express bar conferred under section 15Y read with Regulation 20A this court must entertain the present suit and grant necessary relief cannot be accepted. The contention of the learned counsel for the plaintiff that there was a pre-existing common law right under section 9 of the CPC and that pre-existing common law right is not taken away by the provisions of Section 15Y and 20A also cannot be accepted. It is because the common law right of rectification which is sought to be enforced and exercised by the plaintiff in the

present case arises out of the right conferred on the basis of Take Over Regulations and once the provisions of the Take Over Regulations are invoked then the entire jurisdiction by virtue of the provisions of Section 15Y and 20A is exclusively conferred on the SEBI authorities. Learned counsel's argument that under Section 15Y the only jurisdiction conferred on an adjudicating officer is to penalise the party and not for rectification also cannot be accepted because the provisions of Section 15Y are to be read together with Section 20A of the SEBI Act which inter-alia confers a power on the board to pass any order which includes direction as contemplated under Regulation 44 of the Takeover Regulations. Apart therefrom while interpreting Section 15Y the court must take into consideration that what is barred by Section 15Y is all those matters where the power of adjudication is conferred only on adjudicating authority under Section 15I. The adjudicating power is also conferred on the inquiry officer in case of a breach of the Takeover Regulations. The provisions of Section 15H provide for penalty on

non-disclosure of acquisition of shares and take over of the companies in breach of the Takeover Regulations and under Section 15I power is conferred on the adjudicating authority to determine : First whether there is any breach of the Takeover Regulations and if there is any such breach whether penalty should be imposed as contemplated under section 15H of the said Act. However it does not end there. Even after imposition of penalty the board has been conferred with the power under Regulation 44 to provide for cancellation and allotment of shares contrary to the Takeover Regulations and if there is a transfer of shares contrary to such regulation then there is power to freeze the said shares as well as power to direct the company not to give effect to the said transfer. The said power conferred on the board has been exclusively conferred thereon and the jurisdiction of this court to enforce the same by rectification of share register under Section 20A of the SEBI Act is barred. Thus reading of the provisions of Section 15Y and 20A alongwith the provisions of the Takeover Regulations I have no

doubt in my mind that there is an express bar as to the jurisdiction of this court for rectification of the register when it solely based on the contention that the allotment and/or transfer of shares is contrary to the Takeover Regulations. Though it is not necessary still I feel it is important to clarify that when the rectification of the share register is dehorse the provisions of the Takeover Regulations or any other provisions of the SEBI Act and rules and regulations made thereunder then the court would certainly have jurisdiction to entertain and try such a suit under Section 9 of the CPC. It is because what is barred under section 15Y and 20A is only those acts which falls either under the said Act or under the regulations framed thereunder.

42. It is not possible to accept the contention of the learned counsel for the plaintiff that the provisions of section 15Y and 20A should be so read down so as to exclude the cases of rectification of the share register by shareholder. If the provisions of the Act are such so as to cover all

eventualities which arises under the statue then in that event it is not possible that a special exception be carved out only in the matter of one type of case as it is urged by the learned counsel for the plaintiffs.

43. I am of the opinion that on plain and simple reading of section 15Y read with section 20A of the Act all the cases arising out of the breach and Take Over Regulation must fall within the exclusive domain of SEBI and cannot be complained in the court of Law by virtue of express bar contained under section 15Y and section 20A of the SEBI Act. I am also of the further opinion that there is no doubt that there is a common law right in a share holder to apply for rectification of the share register even though it is not his own share in respect of which he is seeking rectification but still the said right if it flows from the provisions of Take Over Regulations then undoubtedly it would fall within the exclusive Jurisdiction of SEBI and not within the Jurisdiction of this court in view of the express

bar contained under the aforesaid statue. I am of the further opinion that the enactment of the amendment of Take Over Regulation of Amending provisions of SEBI (Substantial Acquisition of Shares and Take Over) Second Amendment (Regulation 2002) w.e.f. 9.9.2002 by providing for the remedy under sub clause (c) and (d) of the Regulation 44 the board has been empowered to give effective relief of Rectification of Share Register by declaring cancellation of the Allotment and / or by directing the company not to give an effect to the transfer if they are found to be in contrary to the Take Over Regulation.

44. I am also of the opinion that once the remedy is provided under the Rule itself then to read down the provision of section 15Y and section 20A in such a narrow manner so as to exclude the case of the plaintiffs from within the purview of the said section is not permissible even on strict construction principle. I am of the opinion that provision of section 15Y and 20A bars the suit which has been filed by the plaintiffs in the

present court and the remedy of the plaintiffs is only before the SEBI.

45. I am of the further opinion that the view taken by the learned single Judge and the Division Bench in the case of Srinivas Reddy (Supra) was in the light of the Regulation Act 44 as stood unamended and therefore the court held that the board has no power to give relief of rectification. However, in the light of subsequent amendment to the Regulation the said argument does not survive any further and therefore the reliance placed by the learned counsel on the aforesaid judgment of the single Judge and Division Bench would not apply in so far as such finding is concerned in view of the amendment provisions referred to hereinabove.

46. I am therefore of the further opinion that the entire suit is based on the sole ground of violation and/or breach of the Take Over Regulation and no other ground has been invoked for rectification of the Share Register. The take over regulation has been enacted under the SEBI Act 1922

and the board is empowered to take cognizance of the breach thereof and therefore the right of the plaintiffs is to complain to the SEBI of such breach and seek necessary remedy. The contention of the learned counsel for the plaintiffs that to merely file complaint with the SEBI is not equivalent to the right of the plaintiffs to file a suit for substantial relief cannot be accepted because the nature of the right conferred by the take over Regulation provides for substantial nature of remedy thereunder. The plaintiffs must therefore seek relief as per the provision of law and cannot independently invoke any common law right of rectification of the share and file a suit independent to the provision of section 15Y and 20A of the SEBI Act. I am therefore of the opinion that the present suit as framed is not maintainable in this court and this court has no Jurisdiction in view of the express bar conferred under the provision of section 15Y and section 20A of the SEBI Act to entertain and try the present suit. I therefore, answer the preliminary issue of Jurisdiction in Negative and I hold that this court

has no Jurisdiction to entertain and try the present suit under section 15Y and section 20A of the SEBI Act.

47. In the light of the aforesaid view I have taken I hold that the suit is liable to be dismissed for want of Jurisdiction and therefore dismiss the suit accordingly. In view of the dismissal of the suitn both the motions being Notice of Motion No.2260 of 2005 and 2486 of 2005 does not survive and both the motions are dismissed as infructuous.

sd/-

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